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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 11

CANADA PACKERS, LIMITED,

Petitioner,

v.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, ET AL.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITIONER'S REPLY BRIEF

In addition to petitioner's opening brief on the merits and respondents' answering brief, two *amicus curiae* briefs have been submitted for the Court's consideration. The *amicus curiae* brief of the United States advocates radical changes in the existing law respecting the Interstate Commerce Commission's jurisdiction to award damages on international shipments and urges repudiation of this Court's

decisions in *News Syndicate Co.* v. *New York C. R. Co.*, 275 U.S. 179; *Lewis-Simas-Jones Co.* v. *Southern P. Co.*, 283 U.S. 654; and *Great Northern Ry.* v. *Sullivan*, 294 U.S. 458. Adoption of the government's position would take from the Commission a power which it has consistently exercised since 1910.

Responding to this challenge, the Commission has filed an *amicus curiae* brief stating strong opposition to the position of the United States. That response to the government is a comprehensive and persuasive defense of its long settled jurisdiction to award damages on international traffic. Petitioner is in full agreement with the Commission's presentation and, to avoid repetition, confines its reply to such additional comments as it believes necessary to emphasize the weakness and impracticability of the government's contentions and recommendations.

The first portion of this brief will be devoted to answering the arguments advanced by respondents in their brief on the merits. The second section is in response to the representations of the United States.

I.

REPLY TO RESPONDENTS' BRIEF

News Syndicate and Lewis are not distinguishable.

At the very outset of their argument (Br. 11) respondents concede that in both of the cases relied upon by petitioner, i.e., *News Syndicate Co.* v. *New York C. R. Co.*, 275 U.S. 179, and *Lewis-Simas-Jones Co.* v. *Southern P. Co.*, 283 U.S. 654, "it was held that a shipper was entitled to reparation on account of unreasonableness of a joint international rate."

Respondents attempt to distinguish the present case from *News Syndicate* and *Lewis* on the ground that the records in those two proceedings did not disclose, as allegedly this record does, the existence of a Commission prescribed maximum reasonable rate for that part of the through transportation that was performed in the United States. Here, respondents contend, the Commission had such information from its own decision in *Consolidated Rendering Co.* v. *Atchison, T. & S.F. Ry. Co.*, 300 I.C.C. 87 (1957) where it prescribed the maximum reasonable rates on potash from Carlsbad and Loving, New Mexico, to Detroit and Port Huron, Michigan, the border points through which petitioner's shipments moved en route to Canada.

Petitioner urges that the distinction relied on by respondents is without legal significance and that this case is controlled by *News Syndicate* and *Lewis*. Those decisions make it clear that railroads are required by Section 1 of the Interstate Commerce Act to establish and maintain just and reasonable rates between points in the United States and the international boundaries. The railroads' failure to maintain such rates was a violation of the Act and compelled the shippers to pay the excessive joint through rates. The Court held that in such circumstances the Commission had jurisdiction to determine the reasonableness of the joint through international rates to ascertain the extent of the shippers' damages (275 U.S. 179, 187; 283 U.S. 654, 659).

In the present case, as in *News Syndicate* and *Lewis*, the railroads failed to establish and maintain just and reasonable rates for the transportation between points in the United States and the international boundaries, and as a consequence petitioner was compelled to pay the excessive joint through rates. Although respondents have expressly

agreed that the joint through international rates charged on petitioner's shipments were properly applicable on this traffic (Stipulation, para. 6; R. 26) they insist that petitioner's damages must be measured by the domestic rates to Detroit and Port Huron prescribed by the Commission in the *Consolidated Rendering* case (300 I.C.C. 87).

Respondents' argument is essentially identical to the contention made by the railroad defendants in *Carstens Packing Co.* v. *Great Northern Ry. Co.*, 264 I.C.C. 164 (1945). That case involved joint through rates from Canada to points in the United States. The railroads argued that where the Commission had prescribed the maximum reasonable rates for the American portion of the haul there could be no violation of the Act and, hence, no grounds for damages. The following language from page 170 of that report is pertinent here:

> Defendants challenge the jurisdiction of the Commission over the rates assailed. They submit that by establishing local rates from the gateways on the basis prescribed in *Livestock—Western District Rates, supra,* they have met their obligation under the Interstate Commerce Act. Their position, in substance, is that there has been no violation of the act for which damages may be awarded, in support of which they cite *News Syndicate Co.* v. *New York Central R. Co.*, 275 U.S. 179, and *Lewis-Simas-Jones Co.* v. *Southern Pac. Co.*, 283 U.S. 654. In *Fruit Importers* v. *Atlantic Coast Line R. Co.*, 203 I.C.C. 139, 143, concerning the merits of a similar contention, division 4 said:
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> > We have jurisdiction to determine the lawfulness of the joint rates applied, irrespective of whether or not local rates, as such, were published and maintained for transportation within the United States to the Canadian border. *Lewis-Simas-Jones Co.* v. *Southern Pac. Co., supra.*

It is clear from the foregoing decision that the prescribed local rates were not applicable on the through shipments and that the Commission, relying on the *Lewis* case, correctly decided that it had jurisdiction to determine the lawfulness of the joint through rates and the amount of the shipper's damages without regard to the measure of the local rates. The fact that the railroads published and maintained rates on local shipments originating at the border was irrelevant because those rates did not apply to and were not the rates charged on the international shipments. This Court discussed this question of local versus joint through rates, at page 663 of the *Lewis* case:

> A carload shipment "originating" at Nogales (Arizona) or at the point where the line of the foreign carrier and that of the defendant touch the boundary or in defendant's railroad yard adjacent to the boundary clearly must be distinguished from a through carload shipment brought to defendant at the boundary by a foreign carrier. The former covers local transportation only and involves two terminal services, one at Nogales, the point where received from the shipper, and the other at San Francisco, the place where delivered to the consignee. The latter involves the transportation of a through car from the point of connection and only the one terminal service at destination. It is manifest that a tariff limited, as is that described in the findings, to shipments so originating on defendant's line does not *apply* to the American part of the transportation of an international shipment on a through bill of lading. (Parenthetical matter and emphasis added.)

Petitioner submits that the *Carstens* and *Lewis* decisions dispose of respondents' argument (Br. 18) that they are not responsible for the full reparation award because they were "excused from any such responsibility by the

Commission's own action in establishing a maximum standard for transportation between the United States origins and the border crossings."

The court below failed to understand the concept that only one rate, in this case the joint through rate, can be applicable on a given shipment. Despite the stipulation between petitioner and respondents that "On all these shipments defendants assessed the applicable single-factor, joint through rates from the mentioned United States origins to the described destinations in eastern Canada . . . ." (R. 26), the lower court held that this case was not governed by the *Lewis* case because respondents had met the burden of proving rates from New Mexico to the border points (R. 40). Since the joint through rates applied, the fact that respondents maintained rates to the border, was immaterial.

It is evident that the lower court misconstrued the *Lewis* decision because it attempted to distinguish that case from the case at bar by referring to the Court's observation (quoted above from page 663) that the tariff there involved did not purport to apply to the American part of the international transportation and that the railroad had failed to show that it maintained a rate from the border as required by the Act (R. 39, 40). Here, the parties had eliminated that question by agreeing that the joint through rates were applicable. None the less the Court of Appeals concluded that the railroads had met the burden of proving rates from the New Mexico origins to the Canadian border points.

Respondents argue (Br. 13) that neither they nor the court below have contended that the Commission-prescribed rates to Detroit and Port Huron "are applicable *per se*

to the Canada Packers shipments . . .'' and they contend that petitioner's argument regarding the applicability of rates is not pertinent to the issue here. Petitioner urges that the question of applicability is the substance of this case.

Detroit rates do not represent American portion of through transportation.

Another defect in the respondents' position is the assumption that the New Mexico to Detroit rates represent American portion of the through transportation (Br. 12, 14, 18). The assumption is unfounded because the rates on shipments terminating at Detroit include the cost of a terminal delivery at Detroit which is a service not required nor accorded the Canada Packers shipments. Those shipments were simply interchanged with a connecting carrier at the border crossing. As noted above, this Court recognized the distinction in service between a shipment terminating or originating at the border crossing and a shipment moving in joint through service.

Petitioner submits that the rate to Detroit reflects something more than just the American portion of the through transportation for it has built into it an amount representing the cost incurred by the American carriers in performing the delivery service at Detroit. Even under respondents' theory it would not be proper to charge petitioner with this element of cost.

Respondents, in arguing that the rates to Port Huron and Detroit represent the American portion of the through transportation, overlook the fact that the rates to Canada are on a higher level than the rates to American destinations of comparable distance. More precisely, the rates

to Canadian destinations were based on the American rates for comparable distances until 1943 when the Commission, in its Docket 29202, held the American rates unreasonably high and required reductions therein. Prior to that proceeding the rates to Welland and Toronto were the same as to Buffalo, New York. The rate to Montreal was related to the rates to New York and Boston (R. 16).

As a result of the Commission's decision in Docket 29202, the rate to Buffalo was reduced 50 cents a ton, and the reduction to New York put that rate $1.80 below Montreal and the rate to Boston became $1.30 under Montreal. No similar reductions were made to the Canadian destinations, presumably because the Commission lacks the power to prescribe such rates for the future (R. 14, 16).

In reaching its decision in this case, the Commission considered the relationships between the American and Canadian rates and determined, as requested by petitioner, maximum reasonable rates which were higher to the Canadian destinations than to American destinations of comparable distances (R. 15, 16). To illustrate, the reparation rate prescribed by the Commission in *Consolidated Rendering* to Buffalo, New York, was $13.30 a ton. The reparation rate determined by the Commission in this proceeding to Welland and Toronto—points that are intermediate to Buffalo—was $13.80 or 50 cents a ton higher than the rate to Buffalo. The same relationships were carried out with respect to the other American and Canadian destinations (See Table II at R. 15).

When respondents complain (Br. 16-18) that the Commission allowed petitioner reparation of 84 cents per ton on shipments to Toronto and thereby penalized them to the extent of 22 cents when compared with the 62 cents reparation award on shipments terminating at Detroit,

they completely ignore the fact that the Toronto rate is 50 cents higher than their rate for service to the comparable American point at Buffalo. Respondents do not explain why this 50 cents should not be taken into account when measuring the maximum reasonable rate from New Mexico to the border points. Certainly they cannot deny that petitioner has paid relatively more for its service than the service accorded consignees located at the border points. The fact is there is no penalty and respondents are enjoying substantially greater revenues on shipments to Canada than on comparable shipments to United States destinations.

The principal emphasis of respondents' argument relates to the rate situation to Detroit and Point Huron and the fact that all of petitioner's shipments moved through those points en route to Canada. The fact that Canada Packers' shipments happened to move through these border crossings is irrelevant. Petitioner was permitted under the tariff naming the joint through rates to have all of its shipments moved via the Buffalo, New York, gateway. In addition, shipments to Montreal were also authorized to move via Constable, New York. Shipments destined to St. John, New Brunswick, could also cross the border at Vanceboro, Maine (R. 27).

It is obvious that if the Commission's jurisdiction were limited as contended by respondents, shippers would seek out and use the border crossing nearest the shipment's Canadian destination. In the present case, the shipments to Toronto and Welland would have moved via Buffalo, New York, and shipments to St. John via Vanceboro, Maine. In the case of Montreal, shipments would have moved via the authorized gateway at Constable, New York. By so routing its shipments, petitioner would have been

assured (under respondents' theory) of having its reparation award measured in relation to the maximum reasonable rates to these other gateways rather than having it limited to the smaller amount which would have accrued if the shipments moved via Detroit. If this were the law, it would result in the virtual closing of the Detroit gateway on any traffic moving to Welland or Toronto and points in Canada east thereof. No use would be made of the Buffalo gateway on shipments to St. John and other points in eastern Canada—those shipments would route via Vanceboro, Maine. But petitioner asserts that this is not the law today nor was it the law at the time its shipments were made. The same argument which respondents urge respecting these shipments which moved in 1948 was considered and rejected by the Commission in its 1945 decision in *Carstens Packing Co.* v. *Great Northern Ry. Co.*, 264 I.C.C. 164, discussed earlier herein.

Arizona Grocery principle not involved.

At page 18 of their brief, respondents contend that the Commission has rejected its own standard of reasonableness by not limiting itself to the reparation award authorized in *Consolidated Rendering*. In support of that argument the railroads cite *Arizona Grocery Co.* v. *Atchison, Topeka & Santa Fe Railway Co.*, 284 U.S. 370. Manifestly, the decision is not authority for the proposition advanced by respondents. That case held, as respondents state, that the Commission may not award reparation in connection with a domestic rate when it previously prescribed the maximum reasonable rates later found to be unlawful. The obvious distinction between that case and the instant situation is that here the Commission did not prescribe maximum reasonable rates on these Canadian shipments and then subsequently order a lower basis and award repara-

tion for the differences in the rates. An equally apparent distinction is that the Commission did not prescribe the Detroit and Port Huron rates as the maximum reasonable rates for the American portion of the through haul, as contended by respondents. The citation is simply not in point.

Pennsylvania R. Co. does not support decision below.

Respondents also contend, at pages 18 and 19, that the Court of Appeals' decision restricted the Commission's award of damages within the confines of Section 1(1) and (2) of the Act as construed in *United States* v. *Pennsylvania Railroad Co.*, 323 U.S. 612. The language quoted by respondents from page 621 of that decision cannot be regarded as support for the lower court's conclusions when the cited language is read in connection with Footnote 9 at page 620. That footnote reference explains that while the Act does not empower the Commission to prescribe or regulate joint international rates, the Court has held that where such joint rates were voluntarily fixed and charged by an American railroad, the Commission had power given it by the 1920 Act to pass upon the reasonableness of the joint through international rate. This is all the power the Commission needed in the present case to enter its reparation order.

Louisville & N. R. Co. case is appropriate.

The remaining contention which petitioner feels deserves response is the argument (Br. 13, 14) that petitioner's reliance on *Louisville & N. R. Co.* v. *Sloss-Sheffield Co.*, 269 U.S. 217, is improper because that case, which holds that connecting carriers are jointly and severally liable for any unlawfulness in a joint rate, involved domestic traffic. The attempt to discredit petitioner's citation can-

not succeed, for the Court in discussing and applying the general rule of liability of joint tort feasors in the *Lewis* case specifically relied on and cited the *Louisville* case as authority for its conclusion (283 U.S. 654, 660). The principle, contrary to respondents' effort at distinction, is fully applicable to international traffic as well as domestic shipments moving on joint through rates.

II.

REPLY TO THE SOLICITOR GENERAL

As indicated in the introductory paragraphs of this reply, the Interstate Commerce Commission has filed an *amicus curiae* brief in opposition to the views of the United States. Petitioner agrees with the Commission's presentation and adopts those arguments as its own with the additional observations which follow.

Infirmities of government's position.

The basic position of the Solicitor General (Br. 11) is that the Commission has no power to determine what is a reasonable charge for transportation service performed partly within a foreign country and, thus, no power to determine, for reparation or other purposes, whether the rates in question are lawful. The government's brief then goes on to suggest a method by which an American shipper can still obtain reparation for an unreasonably high joint through international rate. Under that suggestion the Commission would be required to determine the maximum reasonable proportional rate for the American segment of the through movement and if that "rate" exceeded the divisions received by the carrier the shipper would be entitled to the difference between the division and the maximum reasonable "rate" (R. 26).

Petitioner sees an immediate infirmity in that recommendation because there are many situations in which there would be no division of the through international rate. To illustrate, the New York Central System has a line of railroad running from the state of Michigan, through Canada, and back into the United States at Buffalo and beyond to other points in New York. A shipment from Kalamazoo, Michigan, to Rochester, New York, via the New York Central would move from Kalamazoo to Detroit, where it would cross into Canada, pass through Welland and other points in Ontario, re-enter the United States at or near Buffalo, New York, and proceed to destination at Rochester.

The situation is not unique to the New York Central. A number of other railroads operate into or through Canada in single-line service from American origins. For example, the Norfolk and Western Railway Company has lines from Kansas City, Missouri, to Buffalo, New York, via Detroit and the province of Ontario, Canada. Similarly, the Chesapeake and Ohio Railway Company has lines from points in Illinois and Michigan to Buffalo and Niagara Falls, New York, via Canada through Detroit and Port Huron.*

So far as petitioner is aware, there are no divisions of revenue within the same railroad company, and, therefore, there would be no basis on which the Commission could determine the amount of damages due the shipper under the government's suggestion because one of the critical elements of the formula is missing. This situation would also obtain with respect to that portion of the

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* A map of the Chesapeake and Ohio Railway Company's lines and maps of the other railroads referred to are found in the *Official Guide of the Railways*, October, 1966, issue, published by National Railway Publication Co., New York, New York.

Canadian National Railways' line from Duluth, Minnesota, to Canada via International Falls, Minnesota. A similar observation may be made regarding the Canadian Pacific Railway Company's lines in the state of Maine. Indeed, petitioner's shipments to St. John via the Canadian Pacific re-entered the United States near Megantic, Quebec, on the western boundary of Maine and were carried across the entire width of that state and re-entered Canada at Vanceboro, Maine, enroute to St. John (R. 27).

In this latter situation, the Commission would have to make two determinations. First, as to the maximum reasonable proportional rate to Detroit or other border crossing and, secondly, a determination of the maximum reasonable rate for the transportation through the state of Maine. Two such determinations would also be necessary in the illustration of the shipment from Kalamazoo, Michigan, to Rochester, New York. Further, a shipper complaining about the rate from Kalamazoo to Rochester would be in the unusual position of being required to file a complaint with the Commission against the New York Central for the two American portions of the haul and then bring a suit against that company in Canada for the Canadian portion of the transportation. In other words, the shipper would be required to bring two actions in different countries to obtain reparation from the same railroad defendant.

The Solicitor General asserts at page 19 of the government's brief that the Commission would appear ill-equipped to make determinations regarding the reasonableness of charges for foreign transportation and that it claims no expertise with respect to the costs and other conditions of such transportation. Petitioner submits that the Solicitor General overlooks the fact that the Commission has

been making such determinations for at least fifty years [*Black Horse Tobacco Co.* v. *Illinois Central R. Co.*, 17 I.C.C. 588 (1910)] and that it is intimately familiar with transportation conditions in Canada as indicated in its detailed recital of such conditions in its report in *Carstens Packing Co.* v. *Great Northern Ry. Co.*, 264 I.C.C. 164, as one illustration.

The Solicitor General goes on to argue that the Commission assumed in the present case that Canadian railroad conditions are so much like those in this country that a rate from the United States to Canada that exceeds the maximum reasonable rate for the same kind of shipment over a comparable distance completely within the United States must be unreasonably high. This contention is completely unfounded. The Commission's report very clearly shows that the rates to the Canadian destinations were substantially higher than those to the American destinations of comparable distances. Petitioner respectfully calls the Court's attention to the Commission's discussion, at R. 16, respecting the American and Canadian rates for comparable distances and to Table 2, at page 15 of the transcript of record. That table shows, for example, that the reparation rates to Welland and Toronto of $13.80 are 50 cents per ton higher than the rate to the more distant point of Buffalo.

Attention is respectfully directed also to the reparation rate of $18.60 to St. John, New Brunswick, a distance of 2,551 miles; as compared to the reparation rate of $17.10 to Caribou, Maine, a distance of 2,589 miles, and to the New York rate of $14.20 for 2,100 miles versus the Montreal rate of $16.00 for a slightly shorter haul of 2,075 miles. In no instance were the reparation rates on petitioner's shipments the same as to American destinations of comparable distances. Indeed, all of petitioner's rates

were higher—ranging from 50 cents to $1.80 per ton more than their American counterpart. Apparently the Solicitor General overlooked this part of the Commission's report.

The government indicates its interest in maintaining for the shippers and the carriers of the country the advantages inherent in joint through international rates (Footnote, Br. 36). Petitioner agrees that such rates are beneficial to the country's international commerce, but it foresees the decline of such rates if the position of the Solicitor General is adopted by the Court. If the Commission's jurisdiction is limited as the government contends and if a shipper, injured by the assessment of a joint through international rate, must prove the maximum reasonable proportional rate to or from the border crossing, there will be a strong demand by the shippers for proportional rates instead of the joint rates. American and Canadian carriers will be pressed to publish proportional rates so that the shipper can better ascertain which proportional rate is probably excessively high. This would aid him somewhat in deciding whether to sue in Canada or in the United States. It is likely, however, that he would have to bring actions in both countries to effect a full recovery.

Under the formula for determining the damages suggested by the Solicitor General, the railroads would be required to file with the Commission evidence of their divisions with their foreign connecting carriers. Over the years the railroads have jealously guarded the sanctity of their division sheets and have consistently refused to make them available to the shipping public. Whether the railroads as an industry are prepared or should be required to sacrifice this secrecy is a determination which, petitioner suggests, cannot be resolved from the information available to the Court in the briefs of these parties.

No need for new damage rule.

One final observation—and that relates to the right of the American carriers to limit their liability under joint through rates. The carriers are presently free to enter into joint rates if they so desire or they may meet their obligations under the Act by publishing rates between United States points and the international borders. The establishment of joint through rates is a matter of contract and the American carriers apparently have been successful in protecting themselves under such contracts against having to bear the foreign carrier's portion of a reparation award. As the *amicus curiae* brief of the Commission points out, there is no outcry by the American carriers for the kind of revision proposed by the Solicitor General. On the other hand, the adoption of his suggestions would put the shippers under the burden of bringing separate proceedings in the United States and in Canada to recover their full damages and without any appreciable advantage to the carrier defendants.

Conclusion

Petitioner respectfully submits that this case should be decided on the narrow issue presented by the lower court's decision and not on the broad grounds urged by the government. The Court of Appeals erred in holding that this case is distinguishable from *News Syndicate* and *Lewis* and that respondents had met their burden of proving rates from Mexico to the border points (R. 40).

Petitioner urges that the lower court's decision should be reversed and the judgment of the district court affirmed.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

No. 11.—October Term, 1966.

Canada Packers, Limited, Petitioner, *v.* The Atchison, Topeka and Santa Fe Railway Company et al.	On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[December 5, 1966.]

Per Curiam.

This case concerns the power of the Interstate Commerce Commission in reparations proceedings to determine the reasonableness of a joint through international freight rate. The American railroad respondents and their connecting carriers delivered 131 cars of potash from Carlsbad and Loving, New Mexico, to petitioner's plants in Canada. Petitioner was charged and paid a joint through international rate which it later attacked as unreasonable in a reparations proceeding before the Commission. Finding the rate to be unreasonable, the Commission ordered reparations in the amount of the difference between the rate charged and the rate which would have been reasonable at the time. Respondents refused to pay part of this amount on the theory that it represented an alleged over-charge for the Canadian leg of the trip over which the Commission had no jurisdiction under the applicable statute. This action followed in the District Court to collect the unpaid amount. The District Court found for the petitioner, the Court of Appeals reversed, 342 F. 2d 563, and we granted certiorari, 383 U. S. 906.

The provisions of the Interstate Commerce Act apply not only to transportation within the United States but

to transportation from or to any place in the United States to or from a foreign country "but only insofar as such transportation . . . takes place within the United States." 24 Stat. 379, as amended, 49 U. S. C. § 1 (1). The Court of Appeals held that the Commission in this case was without jurisdiction to determine the reasonableness of freight rates for transportation taking place in Canada and hence was without power to order reparations with respect to the Canadian portion of the trip. The respondents and the United States, the latter differing with the Commission in this case, take a similar view. As an original matter there might well be considerable merit in this position. But the contrary view of the Commission is one of long standing, see *Black Horse Tobacco Co.* v. *Illinois Central R. Co.*, 17 I. C. C. 588 (1910), and *Citizens Gas & Coke Utility* v. *Canadian Natl. Rys.*, 325 I. C. C. 527 (1965), and one which this Court has upheld on more than one occasion. *News Syndicate Co.* v. *New York Central R. Co.*, 275 U. S. 179, squarely held that where a carrier performing transportation within the United States enters into a joint through international rate covering transportation in the United States and abroad, the Commission does have jurisdiction to determine the reasonableness of the joint through rate and to order the carrier performing the domestic service to pay reparations in the amount by which that rate is unreasonable. *Lewis-Simas-Jones Co.* v. *Southern Pacific Co.*, 283 U. S. 654, and *Great Northern Railway Co.* v. *Sullivan*, 294 U. S. 458, are in accord. The Court of Appeals and respondents would distinguish these cases, but we think the differences relied on are insubstantial. Indeed, the United States quite candidly requests that we reconsider these older cases and so narrow the powers of the Commission with respect to joint through international rates. It is not shown, however, that the long-standing construction of the statute by both

the Commission and this Court has produced any particularly unfortunate consequences and Congress, which could easily change the rule, has not yet seen fit to intervene. In these circumstances, we shall not disturb the construction previously given the statute by this Court, and the decision of the Court of Appeals must be

Reversed.

SUPREME COURT OF THE UNITED STATES

No. 11.—October Term, 1966.

Canada Packers, Limited, Petitioner, *v.* The Atchison, Topeka and Santa Fe Railway Company et al.	On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[December 5, 1966.]

Mr. Justice Douglas, dissenting.

An Act of Congress gives the Interstate Commerce Commission jurisdiction over transportation from or to any place in the United States to or from a foreign country "but only insofar as such transportation . . . takes place within the United States." 24 Stat. 379, as amended, 49 U. S. C. § 1 (1). How that can be read, "Whether or not such transportation . . . takes place place within the United States" remains a mystery. *News Syndicate Co.* v. *New York Central R. Co.*, 275 U. S. 179, and *Lewis-Simas-Jones Co.* v. *Southern Pacific Co.*, 283 U. S. 654, actually decided something less. In *New Syndicate* there was a through rate from a point in Canada to New York City; but the carrier had failed to establish a rate from the international border to New York City. The Court refused to let the jurisduction of the Commission be defeated in that way and allowed it to determine the reasonableness of the through rate. 275 U. S., at 187. In the *Lewis-Simas-Jones* case the Court also emphasized that no tariff applicable "to the American part of the transportation of an international shipment on a through bill of lading" had been established "as required by the Act." 283 U. S., at 663. Those cases were ex-

plained in *Great Northern R. Co.* v. *Sullivan*, 294 U. S. 458, 462.

> "In each, shipments moved from an adjacent country into the United States on through rates made by joint action of the participating foreign and American carriers. The American carrier, having violated the Act by failure to file any tariff to cover its part of the transportation, collected freight charges found to be excessive and, as one of two or more joint tort-feasors, was held liable to the extent that the charges it exacted were in excess of what the commission ascertained to be just and reasonable. But here the charges collected were not excessive, and confessedly the same amounts lawfully might have been collected without injury or damage to plaintiff if only the connecting carriers had imposed the charges by means of 'joint' instead of the 'combination' through rates that they did establish."

In the present case rates from Carlsbad and Loving, New Mexico, to the Canadian border points had been established. 300 I. C. C. 87. The issues presented in *News Syndicate* and *Lewis-Simas-Jones* are therefore not offered here. *Stare decisis* is an important principle in dealing with statutory law,[1] though even then we

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[1] "The House of Lords no longer regards the reasoning in previous cases as sacrosanct. Witness its striking departure in *Public Trustee* v. *Inland Revenue Commissioners* [1960] A. C. 398, and *Midland Silicones Ltd.* v. *Scruttons Ltd.* [1962] A. C. 446. Those cases show that the House will not treat as absolutely binding any line of reasoning in a previous case which was not necessary to the decision: but will regard itself as at liberty to depart from it if convinced that it was wrong." *Penn-Texas Corp.* v. *Murat Anstalt* (1964) 2 Q. B. 647, 661.

And see (1966) 7 C. L. 251a:

"The Lord Chancellor made the following statement on July 26, 1966, on behalf of himself and the Lords of Appeal in Ordinary:

"Their Lordships regard the use of precedent as an indispensable foundation upon which to decide what is the law and its application

have not always placed "on the shoulders of Congress the burden of the Court's own error." *Girouard* v. *United States*, 328 U. S. 61, 70.[2] As we said in *Toucey* v. *New York Life Ins. Co.*, 314 U. S. 118, 140–141:

> "There is no occasion here to regard the silence of Congress as more commanding than its own plainly and unmistakably spoken words. This is not a situation where Congress has failed to act after having been requested to act or where the circumstances are such that Congress would ordinarily be expected to act. . . . To find significance in Congressional nonaction under these circumstances is to find significance where there is none."

And see *Helvering* v. *Hallock*, 309 U. S. 106, 119–122. Compare *Mabee* v. *White Plains Publishing Co.*, 317 U. S.

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to individual cases. It provides at least some degree of certainty upon which individuals can rely in the conduct of their affairs, as well as a basis for orderly development of legal rules.

"Their Lordships nevertheless recognise that too rigid adherence to precedent may lead to injustice in a particular case and also unduly restrict the proper development of the law. They propose therefore to modify their present practice and, while treating former decisions of this House as normally binding, to depart from a previous decision when it appears right to do so.

"In this connection they will bear in mind the danger of disturbing retrospectively the basis on which contracts, settlements of property and fiscal arrangements have been entered into and also the especial need for certainty as to the criminal law.

"This announcement is not intended to affect the use of precedent elsewhere than in this House."

See generally, Stare Decisis in Contemporary England, 82 L. Q. Rev. 203 (1966).

[2] We have not been reluctant to reverse our own erroneous interpretation of an Act of Congress. See, *e. g.*, *Helvering* v. *Hallock*, 309 U. S. 106; *Nye* v. *United States*, 313 U. S. 33; *Toucey* v. *New York Life Ins. Co.*, 314 U. S. 118; *Commissioner of Internal Revenue* v. *Estate of Church*, 335 U. S. 632; *James* v. *United States*, 366 U. S. 213; *Smith* v. *Evening News Assn.*, 371 U. S. 195; *Local No. 438, Construction & General Laborers' Union* v. *Curry*, 371 U. S. 542, 552; *Fay* v. *Noia*, 372 U. S. 391, 435.

178, 185. Nor do we have here a precedent "around which, by the accretion of time and the response of affairs, substantial interests have established themselves." *Helvering* v. *Hallock*, *supra*, at 119.

Moreover, we need not be slaves to a precedent by treating it as standing for more than it actually decided nor by subtly eroding it in sophisticated ways. See Radin, The Trail of the Calf, 32 Cornell L. Q. 137, 143 (1946). It is enough that we do not approve "of the doctrinal generalization which the previous court used" (*ibid.*) and confine the precedent to what it actually decided. Certainly we should not extend the range of a precedent beyond its generating reason, especially when another policy, here the plain words of an Act of Congress, will be impaired by doing so.

I would affirm this judgment.

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